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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 890

RALPH T. BRENGLE,
Petitioner and Appellant below,

vs.

JOHN E. NEWMAN, D/B/A NEWMAN KRAUSE COMPANY,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RALPH T. BRENGLE,
Pro Se.

Of Counsel:
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner would respectfully show to the Court:

OPINIONS DELIVERED IN THE COURT BELOW.

The District Court did not write an opinion. The opinion of the Court of Appeals is reported in 250 F. 2d 660, a copy of which is appended hereto and made a part hereof.

JURISDICTIONAL STATEMENT.

1. The judgment of the District Court was rendered on October 17, 1956, and entered on the record October 17, 1956, and said judgment was affirmed by the Court of Appeals, on December 20, 1957.

2. A petition for rehearing was denied by the Court of Appeals on January 27, 1958.

3. The statutory provision believed to sustain the jurisdiction of this court is section 1254 of Title 28 of the United States Code, which provides that:

> "Cases in the Court of Appeals may be reviewed by the Supreme Court by the following methods: 1. By the writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * *".

QUESTIONS PRESENTED FOR REVIEW.

The questions herein presented for review are:

a. Whether under rule 8a of the Federal Rules of Civil Procedure, providing that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief, * * *" a complaint is subject to a motion to dismiss as to a person against whom no claim is alleged, or whether under such rule it is sufficient that the complaint merely allege a claim for relief, it not being necessary to link the parties named as defendants with the claim.

b. Whether the interpretation or construction of a written contract is a question of law for the court and not one of fact for the jury, or whether the Court of Appeals was correct in stating:

> "In order to determine the rights of the parties under the contract in suit, the clause therein as to payment of commissions had to be construed. * * *

The evidence of the plaintiff, which went to the jury without objection, and that introduced by the defendants themselves made the question of construction one for the jury. Accordingly, the District Court was correct in not construing the contract as a matter of law and submitting the construction of the contract to the jury."

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ETC. INVOLVED.

Rule 8a of the Rules of Civil Procedure for the District Courts of the United States, Section 2072, of Title 28 at page 4298, which provides as follows:

> "A pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain * * *
>
> "2. A short and plain statement of the claim showing that the pleader is entitled to relief, * * *"

is involved in this cause.

STATEMENT OF THE CASE.

This action was brought in the United States District Court for the Southern District of Indiana by John E. Newman, respondent, against Potter and Brumfield Manufacturing Company, Inc., and Ralph T. Brengle, petitioner, to recover commissions claimed to be due under the terms of a written contract. The amended complaint was in three counts. Count 1 was based upon a written contract seeking commissions allegedly due. Count 2 was in quantum meruit, and Count 3 was for unjust enrichment. The defendant filed an answer consisting of five defenses, the first defense being that the complaint did not state a claim against defendant, Brengle, upon which relief could be granted. The second defense was that the defendant was an independent contractor. The third defense consisted of admissions and denials. The fourth was a plea of estoppel. The fifth defense was a plea of payment. Counts 1 and 2 were tried before a jury, and Count 3 before the Court. The jury found for the plaintiff and against the defendant, Ralph T. Brengle, in the sum of $25,140.27 on Count 1 and in favor of the other defendant, Potter and Brumfield Manufacturing Company, Inc., on said count. The court directed a verdict in favor of both defendants on Count 2, and sustained a motion for involuntary dismissal as to both defendants on Count 3.

One of the main questions presented to the trial court and the Court of Appeals as to Count 1 was whether the complaint was subject to a motion to dismiss in regard to defendant, Brengle, when the only allegation in the complaint which linked him with the contract sued upon was that he while acting solely as the agent for the defendant, Potter and Brumfield, entered into said contract with the plaintiff, Newman.

The other main question involved in Count 1 was the question of the construction of the following clause in the contract sued upon:

> "Until the effective date of cancellation hereof, *first party will pay second party a sales commission* as follows, on the net selling price *on all shipments made by Potter and Brumfield Manufacturing Company, Inc.*" (Italics ours.)

The defendant contended at the trial that under this contract, he was entitled to commissions on orders which were secured in his territory during his term of employment, irrespective of the time when the shipments of such orders were made. On the other hand, the defendant took the position that the language of the instrument providing "until the effective date of cancellation hereof, first party will pay second party a sales commission * * * on all shipments made by Potter and Brumfield, Inc." could not mean anything other than that the commissions were paid to plaintiff Newman on "all shipments made by Potter and Brumfield Manufacturing Company, Inc.," and such commissions terminated on the effective date of cancellation of the contract and therefore, the plaintiff, by the express terms of his agreement, was not entitled to any commissions whatsoever on any shipments made after such date. The construction of the contract was submitted to the jury and they returned a verdict for defendant, Potter and Brumfield, and against defendant, Brengle, in his individual capacity, in spite of the fact that it was alleged in the complaint that he was acting solely as an agent for defendant, Potter and Brumfield, when he entered into the contract with plaintiff, Newman. The defendant moved for judgment notwithstanding the verdict and, in the alternative, for a new trial. This motion was overruled. Timely appeal was taken to the Court of Appeals for the Seventh Circuit and the judgment of the lower court was

affirmed, the court holding that since there had been evidence introduced by both parties as to contracts and negotiations between the parties prior to the execution of the contract in suit along with the acts and conversations of the parties prior and subsequent thereto and simultaneous therewith the construction of the contract in suit was for the jury and that under Rule 8a of the Federal Rules of Civil Procedure, the complaint stated a valid cause of action for which relief could be granted as against the defendant, Brengle. Motion for re-hearing was timely filed and denied by the court.

BASIS FOR FEDERAL JURISDICTION.

Review of the judgment of the United States District Court for the Southern District of Indiana, Evansville Division, and of the decision of the United States Court of Appeals for the Seventh Circuit being sought, Federal jurisdiction in the court of the first instance is based upon the following allegations in plaintiff's complaint, found in the appendix of the defendant-appellant at page 6, reads as follows:

> "1. That plaintiff, John E. Newman, d/b/a Newman-Krause Company, is a citizen of the State of Illinois, and the defendant, Ralph T. Brengle, is a citizen of the State of Indiana, the defendant, Potter and Brumfield Manufacturing Company, Inc., is a corporation incorporated under the laws of the State of Indiana, and for convenience, is hereinafter called Potter and Brumfield."

The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decisio . of the Court of Appeals that the District Court was correct in not construing the contract as a matter of law, and that the construction of the contract was a question of fact to be submitted to the jury is a decision on an important question of Indiana law, which is in conflict with applicable Indiana decisions.

The opinion of the Court of Appeals on the question of construction of the contract in suit is based upon the theory that the duty to construe a written contract terminates if evidence is introduced of contracts and negotiations between the parties prior to the execution of the contract, and the construction of the contract thereupon becomes a function of the jury. The portion of the decision in which the Court makes their holding on this point reads as follows:

> "In order to determine the rights of the parties under the contract in suit the clause therein as to payment to commissions had to be construed, the defendant-appellant contended that the clause was unambiguous and should have been construed by the court as a matter of law. However, the defendant without objection, permitted the plaintiff to introduce in evidence contracts and negotiations between the parties prior to the execution of the contract in suit along with the acts and conversations of the parties prior and subsequent thereof as simultaneous therewith. The defendants also offered the same kind of evidence in an attempt to prove their interpretation placed upon the contract in suit was ambiguous or unambiguous because the evidence of the plaintiff, which went to the jury without objection, and that introduced by the defendants themselves made the question of construc-

tion one for the jury. Accordingly, the District Court was correct in not construing the contract as a matter of law and in the submission of the cause to the jury."

The petition respectfully submits that this rule is in conflict with the law of Indiana. The firmly settled rule applicable not only in Indiana but also well established throughout the various jurisdictions, is that:

"Construction of Documents. The construction of all written instruments belongs to the Court. It may become necessary to hear evidence of the surrounding circumstances that fill out the meaning of the words, as well as of any local or commercial meanings attached to particular words by usage; and the ascertainment of this is for the jury. But, subject to the amplification or the precision of the meaning thus ascertained, it is the duty of the jury to take the construction of the instrument from the Court." Wigmore on Evidence, §2556, p. 522.

"The rule laid down in cases which consciously regard the lines that separate the function of the court from that of the jury is substantially that the construction of the contract is always a matter of law for the court no matter how ambiguous or uncertain or difficult its terms, and the jury can only assist in determining disputed questions of fact; that if the circumstances to be considered in the interpretation of the contract are in dispute and the meaning of the contract depends thereon, the determining of the disputed facts must be left to the jury, but the proper construction of the contract cannot be left to them." 53 Am. Jur. "Trial", §270, p. 229.

"If the facts and circumstances to be considered in the interpretation of the contract are undisputed, there is nothing to submit to the jury, and the court must direct a verdict in accordance with the construction placed on the contract by the court, in the light of the admitted circumstances. On the other hand, if such circumstances are in dispute, and the meaning of the contract is to be determined one way, according to one view of the facts, and another way, in accordance with

the other view of the facts, then the determination of the disputed fact must be left to the jury; *but in no case can the proper construction of the contract be left to a jury.*" * * * (Italics ours.) 65 American Law Reports, page 650.

The following Indiana decisions hold that the construction of a contract is a question of law for the court, and the jury's only function is to determine disputed questions of fact:

"It may be properly left to a jury to determine the facts, but, the facts having been determined, the interpretation of the contract remains the exclusive province of the court." *Portland Body Works* v. *McCullough, etc. Co.*, 72 Ind. App. 216.

"The construction of a written contract is for the court, and the jury have no authority to take upon themselves the work of giving the instrument a construction." *Dixon* v. *Duke*, 1882, 85 Ind. 434.

"The construction of a contract is for the court, and not for the jury." *Indiana Fed. Supply Co.* v. *Indianapolis*, 1908, 41 Ind. App. 654, 84 N. E. 776.

"It is the exclusive province of the court to interpret or construe the provisions of a written contract involved in any action." *Mondamin, etc., Dairy Co.* v. *Brudi*, 1904, 163 Ind. 642.

See also: *Vulcan Iron, etc. Co.* v. *Electric, etc. Min. Co.*, 54 Ind. App. 28; *Beatty* v. *Gates*, 1853, 4 Ind. 154; *Scott* v. *Brown*, 1927, 90 Ind. App. 367, 157 N. E. 64; *Taylor* v. *Altgelt*, 224 Ind. 283, 67 N. E. 2d 531.

The contract in suit clearly provided that commissions were to be paid to the plaintiff, Newman, on shipments made by Potter and Brumfield into the plaintiff's territory until the date of cancellation of the contract. This provision of the contract cannot possibly be reasonably construed to mean anything other than that the shipment must

be made before the date the contract is cancelled in order for said shipment to entitle the plaintiff to a commission thereon. Nevertheless, although a motion for a directed verdict was filed at the close of the plaintiff's evidence, and renewed at the close of *all the evidence*, the court submitted the construction of the contract to the jury and they construed the provision of the contract differently, and the court overruled the defendant's motion for judgment notwithstanding the verdict. The Petitioner respectfully submits that the court was in error in submitting the construction of the contract to the jury, and the construction of the contract by the jury was completely illogical, and therefore the court was in error once more by denying the petitioner's motion for a judgment notwithstanding the verdict.

2. The decision of the said Court of Appeals, as to whether the complaint stated a sufficient claim for relief involves an important question of Federal law, which should be settled by the court, the decision being in conflict with the decisions of the Court of Appeals of the Ninth Circuit, on the same matter, in the case of *Patten* v. *Dennis*, U. S. Attorney, 134 F. 2d 137, and the case of *Pierce* v. *Wagner*, 34 F. 2d 958. These cases hold that a claim showing a right to relief, is not stated sufficiently unless the statement of claim for relief links the parties before the court with the legal wrong so as to entitle the plaintiff to judicial redress against the defendant. In the case brought before this court by this petition, the only allegation of the complaint attempting to connect the defendant, Brengle with the cause of action is that "defendant Brengle, as the exclusive sales manager for Potter and Brumfield, entered into a written contract with plaintiff." In other words, the complaint charges that Brengle, while acting on behalf of Potter and Brumfield as their agent, entered into the contract with

plaintiff, Newman. It is an elementary general rule of law that is well established throughout the country that an agent is not personally liable for the contracts he enters into on behalf of his principal. The Court of Appeals in upholding the ruling of the District Court, denied the petitioner's motion to dismiss the complaint, cited the case of *Asher* v. *Ruppa*, 7th Circuit, 173 Fed. 2d 10. The *Asher* case states:

> "If, in view of what is alleged it reasonably can be conceived that plaintiff can upon the trial make a case which would entitle him to some relief, the complaint should not be dismissed."

The petitioner is not attempting here to refute this statement of law, but maintains that the language of the *Asher* case is not sufficiently broad to permit a plaintiff to allege his case so indefinitely as to omit making his claim out against the person from whom relief is sought. Thus, the petitioner respectfully submits that said Court of Appeals has incorrectly broadened the meaning of Rule 8a of the Civil Procedure in regard to what the plaintiff must allege before he has stated a valid claim for relief, and the holding of the said Court of Appeals is in conflict with the decisions of the other circuits.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the Seventh Circuit commanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, a certified transcript of the record and proceedings herein; and that the decree of the United States District Court for the Southern District of Indiana, Evansville Division, be re-

versed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Respectfully submitted,

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Of Counsel:

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APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

No. 11993. September Term, 1957. September Session, 1957

JOHN E. NEWMAN, d/b/a NEWMAN KRAUSE COMPANY,
Plaintiff-Appellee,
vs.
RALPH T. BRENGLE,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division.

December 20, 1957.

Before SCHNACKENBERG, HASTINGS and PARKINSON, *Circuit Judges.*

PARKINSON, *Circuit Judge.* This is an appeal from a judgment on a jury verdict for the plaintiff and against the defendant Ralph T. Brengle in the sum of $25,140.27 on Count One of an amended complaint, and in favor of the other defendant Potter & Brumfield Manufacturing Company, Inc.

The amended complaint was in three counts. Count One declared upon a written contract seeking commissions, allegedly due, Count Two in *quantum meruit* and Count Three for unjust enrichment.

The issues joined by Counts One and Two and the answers of the defendants thereto were submitted to the jury. At the conclusion of the plaintiff's case the defend-

ants moved for a directed verdict. The District Court denied the motion as to Count One and granted the motion as to Count Two. The trial proceeded on Count One with the jury returning the verdict on which judgment was entered.

While the jury was deliberating, Count Three was tried to the Court terminating in an involuntary dismissal at the conclusion of all of the evidence. There is no cross-appeal and, therefore, there is no question raised by the plaintiff on the action of the District Court in directing a verdict for the defendants on Count Two or in dismissing Count Three.

The defendant-appellant asserts in his brief that the errors relied upon arise out of the ruling of the court as to his first defense; the failure of the court to require plaintiff to elect as to the theory upon which he intended to proceed; failure to grant motion for directed verdict on Count One of the amended complaint; failure of the court to construe the contract as a matter of law; rulings on the evidence; instructions; submission of the cause to a jury; denying motion for judgment n. o. v. and denying motion for new trial.

There is no question but that Count One of the amended complaint stated a claim upon which relief could be granted as to the defendant-appellant. *Asher* v. *Ruppa*, 7 Cir., 1949, 173 F. 2d 10. The District Court was correct in denying the first defense which was a motion to dismiss for failure to state a claim "upon which relief can be granted."

There is no merit to the contention that the District Court committed error in failing to require the plaintiff to elect as to the theory upon which he intended to proceed. The defendants, *sua sponte*, withdrew their motion after the District Court directed a verdict for them on Count

Two and thereby waived error, if any, of which complaint is now attempted to be made.

At the conclusion of the plaintiff's case, the defendants' motion for a directed verdict was denied as to Count One of the amended complaint and they thereupon introduced evidence on their behalf in defense. Error, if any, in the denial of the motion was thereby waived, and the motion was not well taken when made at the conclusion of all the evidence because of the evidence introduced by the defendants and particularly under the second defense of the defendant-appellant. *Auto Transport, Inc.* v. *Porter*, 8 Cir., 1952, 197 F. 2d 907, 908-909.

The defendant-appellant filed an answer consisting of five defenses. The second defense alleged that at all times mentioned in plaintiff's amended complaint and with reference to all matters alleged therein he "was, and acted in the capacity of, an independent contractor." He introduced evidence in proof of that defense. Accordingly when the defendants renewed their motion for a directed verdict at the close of all the evidence the question as to whether the defendant-appellant was acting as an independent contractor or as the agent of the defendant Potter & Brumfield Manufacturing Company, Inc. was one for the determination of the jury. The contract in suit was signed by the defendant-appellant without designation and the contract, as to the capacity in which he was acting at the time of its execution, was ambiguous and indefinite.

In order to determine the rights of the parties under the contract in suit the clause therein as to payment of commissions had to be construed. The defendant-appellant contended that the clause was unambiguous and should have been construed by the Court as a matter of law. However, the defendants without objection permitted the plaintiff to introduce in evidence contracts and negotiations between the parties prior to the execution of the contract

in suit along with the acts and conversations of the parties prior and subsequent thereto and simultaneous therewith. The defendants also offered the same kind of evidence in an attempt to prove their interpretation placed upon the contract. Therefore, we are not called upon to decide whether the contract in suit was ambiguous or unambiguous because the evidence of the plaintiff, which went to the jury without objection, and that introduced by the defendants themselves made the question of construction one for the jury. Accordingly, the District Court was correct in not construing the contract as a matter of law and in the submission of the cause to the jury.

In a careful review of the record in this case we cannot say that the District Court committed reversible error in any of its rulings on the evidence.

The Court gave instructions No. 15 and No. 16 concerning the construction of ambiguity and uncertainty in contracts, to neither of which the defendants objected. The defendants did object to the Court's instruction No. 13 and tendered to the Court instructions which informed the jury that they should determine from the actions of the parties the meaning they placed on the contract and thus decide its proper construction. The Court's instruction No. 13 given and objected to and the defendants' two instructions that were refused state that the harshness or inequity of a specific interpretation shall or shall not be considered according to the interpretation placed upon the contract by the parties themselves and that such interpretation will be determinative. The parties emphasize opposite sides of the problem, as might be expected, but the rationale is the same. Since the instructions requested by the defendants do nothing more than elaborate on the Court's instruction No. 13 we believe there is no merit to the defendants' objection to the instructions given or refused on these grounds.

The defendant-appellant also objects to the giving of the Court's instructions No. 7, 12 and 25 dealing with the law on breach of contract as to the burden of proof and the measure of damages. Error, if any, in the giving of these instructions would be harmless for the simple reason that any damages occasioned by defendants' breach of the contract and the amount of any commissions owing to the plaintiff under the contract would be identical.

Upon the record as it comes to us we believe the construction of the contract in suit was for the jury and the jury having decided that question on a record containing sufficient evidence to support its verdict and free from prejudicial error we cannot disturb it.

The judgment is

AFFIRMED.